

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
DISSENTING**

Re: *Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard*,
GN Docket No. 16-42, Report and Order and Further Notice of Proposed Rulemaking
(November 16, 2017)

If we want to discuss the future of television, I think we need to make a nod to the not too distant past. I think we need to talk about 2005.

Technology had a moment in 2005. It was the year that Apple introduced the iPod nano, YouTube came on the scene, and gaming got a boost with the introduction of the Xbox 360. So much about these technologies still informs our world today. In 2005 Stephen Colbert also coined the term “truthiness.” I think it’s fair to say that this, too, has some relevance in our world right now.

In 2005 Congress passed the Digital Television Transition and Public Safety Act. This law set up the future of television. It laid out a framework for the move from analog to digital broadcasting. But it did more than introduce a new standard with improved sound and picture quality, known as ATSC 1.0, because it created a schedule. As part of this schedule, it featured an end date for a nationwide transition and a program to help ensure existing television sets would continue to work after this technology change. The FCC then took its cues from Congress and worked to ready the nation for the transition. It selected Wilmington, North Carolina as a test market to fully transition nine months early. Then it took the lessons learned in this test and proceeded to do a statewide version in Hawaii before any change on a national level.

I think we can learn a lot about how to forge the future of television from what happened back in 2005. This effort featured three essential things. First, Congress led the way and set the framework. Second, a program was put in place to ensure no consumer was left behind or stuck with the full cost of buying a new television set or equipment. Third, the FCC explored the transition in test markets before unleashing this change nationwide.

Fast forward to the present. Today the FCC is authorizing Next Generation Television and the introduction of a new standard—ATSC 3.0. Yes, we’re doing it again.

There is a lot to be excited about with this new standard—Ultra High Definition picture quality and immersive audio, advanced emergency alerts, and innovative interactive services. This is good stuff. It could mean real innovation for broadcasting—on par with new services that have emerged on so many other screens all around us. But what we do today is rush this standard to market with an ugly disregard for the consumer consequences.

Let’s be very clear about this: This standard is not backwards compatible with current television devices. That means every one of us will need to replace our television sets or buy new equipment. The FCC calls this approach market driven. That’s right—because will all be forced into the market for new television sets or devices.

To be clear, this won't happen immediately, because for the time being the FCC calls the new standard voluntary. While it's voluntary, however, stations will have the right to negotiate with cable and satellite companies for the simultaneous carriage of ATSC 1.0 and ATSC 3.0 signals. That means consumers could find their bills going up because they will be stuck paying for two signals—even though their current television set can only receive one. That sounds a lot like paying more and getting less.

I think the way the FCC plans to proceed is no great boon for consumers. So let's call it what it is: It's a tax on every household with a television.

I think the FCC needs to go back to the drawing board and find a less disruptive way to facilitate broadcast innovation. There's a way to do it. It's right there in the 2005 playbook.

First, there is no congressional mandate. What we have instead is a few unelected FCC officials deciding you need to buy new televisions, get new equipment, and locate the HDMI port on the back of your set.

Second, there is no program to defray the cost of the new devices, equipment, or television sets that consumers will need to purchase.

Third, there is no test community or sandbox to understand and learn from our policies before unleashing them on a national scale. We should be testing ATSC 3.0 in every household in a single market—and learning from it—*before* giving the green light nationwide.

If we do this, there will be plenty to study. Because there are still big questions about this new standard. For starters, I think we need to better understand the consumers at risk of being left behind. I also think we need to better understand targeted advertising on television and the implications for privacy, the use of encrypted signals, the collection of audience data, and the susceptibility to hacking and malware. While we're at it we had better make sure that the High Definition signals we are now accustomed to when we watch a football game or our favorite film are not downgraded to Standard Definition in order to ensure broadcasters experimenting with ATSC 3.0 can simulcast two signals—one of which we can't even see.

In addition, the FCC needs to better understand the patent issues involved. When the agency adopted the ATSC 1.0 standard, it made clear that reasonable and nondiscriminatory terms were part of the package. In today's order, this issue is addressed in no more than a footnote. Moreover, we know that Sinclair Broadcasting—which holds essential patents for ATSC 3.0—has been one of the biggest champions of this new standard. We also know that they have pending before the agency the biggest broadcasting transaction in our nation's history. Before we authorize billions for patent holders and saddle consumers with the bills, we better understand how these rights holders will not take advantage of the special status conferred upon them by the FCC.

Change is coming at all of us at lighting speed. I think broadcasters can and should be part of that innovative rush. But I think what the FCC is doing here is irresponsibly imprecise

and cavalier in its disregard for the expenses it imposes on consumers. I believe the next transition should leave no viewer worse off, and leave all of us better off. Because this decision fails that test, I dissent.